

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION**

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GERALD KINER, )  
                  )  
Plaintiff,     )  
                  )  
v.               )                                  **No. 23-cv-02805-SHL-tmp**  
                  )  
CITY OF MEMPHIS, et al.,     )  
                  )  
Defendants.     )

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**ORDER**

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On December 27, 2023, Gerald Kiner filed a *pro se* complaint against the City of Memphis, Officer L. Cook, Officer L. Leon, Officer A. Wiley, Chief Cerelyn CJ Davis, Mayor Jim Strickland in his personal capacity and his capacity as Mayor, Jennifer Sink, and Allison Fouche. (ECF No. 1.) On December 28, 2023, Kiner submitted executed summonses for all the defendants. (ECF Nos. 9, 10, 11, 12, 13, 14, 15, 16, 17.) At a scheduling conference held on January 30, 2024, counsel on behalf of the City of Memphis accepted service for the defendants in their official capacities but declined to accept service for the defendants in their individual capacities.

On February 9, 2024, the undersigned entered an order directing Kiner to properly serve the individual defendants by April 9, 2024, which included references to the Rule 4 of the

Federal Rules of Civil Procedure and Rule 4.04 of the Tennessee Rules of Civil Procedure. (ECF No. 32.) The parties appeared on Thursday, April 11, 2024, to determine the status of service of the individual defendants and to enter a scheduling order. However, Kiner represented to the court that he did not serve the individual defendants, claiming that he did not receive sufficient instruction from the court on how to proceed.

When asked how he wanted to proceed, Kiner requested additional time to consider whether he wanted to serve the individual defendants or whether he would voluntarily dismiss the individual defendants and proceed against the defendants only in their official capacities. Accordingly, the undersigned gave Kiner thirty days to either serve the individual defendants or file a motion to voluntarily dismiss them, and the scheduling conference was reset for May 23, 2024, at 10:00 am. Additionally, and without objection from counsel for the served defendants, the undersigned provided Kiner with a copy of Rule 4.04 of the Tennessee Rules of Civil Procedure, which lists the approved methods of service under Tennessee law.

Therefore, Kiner is ordered by no later than May 10, 2024, to either file a motion to voluntarily dismiss the individual defendants pursuant to Rule 41(a) of the Federal Rules of Civil Procedure, or to provide proof of service as to the individual defendants. Failure to do either may result in the undersigned

submitting a report and recommendation to the presiding district judge recommending dismissal of the individual defendants. The scheduling conference is hereby reset to May 23, 2024, at 10:00 am in Courtroom 6.

IT IS SO ORDERED.

s/Tu M. Pham

TU M. PHAM

Chief United States Magistrate Judge

April 11, 2024

Date